indexed both as to subject matter and statutes. A good feature of the table of cases is that the dates of most of the cases are given. However, in a few cases the date is omitted, apparently without any reason.

The method of treatment adopted by the author in the body of the work is to give the section of the statute in fine print with a short statement of the results reached in different decided cases, which have arisen under the section or similar sections. This is an easy method for an author, but results in making the book nothing more than an annotated tax law and subject to all the defects incident to such a work. What is really needed, is a readable work based on the statutes and decisions giving a statement of exactly how to proceed in making up reports for taxation and in having the action of the tax commissioners reviewed. General works of this character exist, but such a work, devoted exclusively to corporate taxation, would be of help. As to the present work, it is almost as difficult to follow as the tax law itself.

The author apparently prefers lengthy forms. In view of the technical character of many of the New York decisions on questions of practice, he is probably correct in so doing, although the result is that the forms become inconveniently long. As a whole, the forms seem to be carefully drawn, although it must be said that paragraph 3 in form number 6 is hardly proper pleading.

CONSTITUTIONAL LAW IN THE UNITED STATES. By Emlin McClain, LL.D. New York, London and Bombay: Longmans, Green and Co. 1905. pp. xxxviii, 438.

The purpose of this volume is stated as follows by the author: "This book is not, on the one hand, a theoretical exposition of the general principles of government, nor, on the other, a mere description of the workings of the State and federal governments and their various departments. But, as its title imports, so far as the accomplishment corresponds to the purpose, it is an exposition of the principles of an established system; and it is intended to afford to the teacher an explanation of the important events of the history of our government, and the means of intelligently comprehending the problems constantly arising, the solution of which will make our constitutional history of the future. In short, if the book serves its purpose, it will enable the person who intelligently uses it to reach a rational and correct conception of the nature and meaning of the constitution of the United States and of his state, and to understand the essential features of the governments provided for by such constitutions."

A valuable feature of the work is the attention given to the function of the "state" in our system of government. The activities of the national and state governments are treated together in each field of operation. This brings out the correlation of the two, and shows in a satisfactory manner the way in which the whole field of government is covered by our dual system. Every part of the Federal Constitution, and every important part of a state constitution, is taken up and discussed, largely from the point of view of present operation. The discussion is on broad lines and is nowhere cumbered with

unimportant or technical details. The book will fill a useful place between an elaborate commentary, like Hare, and a handbook of details, like Andrews.

While the book deserves, on the whole, hearty commendation, parts of it are open to adverse criticism.

On page 17, the author's discussion of and conclusions concerning "sovereignty" are not satisfactory. He says, "It cannot be said that sovereignty resides in the voters; for as they are determined and their action is regulated by the constitution and the statutes, they can do nothing except as authorized by such constitutions." This would be a correct view if our constitutions were prepared for, and imposed upon, the voters by some outside superior authority. But such is not the case. The voters are the very ones who adopt and amend constitutions—in the state directly, in the nation indirectly.

In a constitutionally governed country the true test of sovereignty is applied by asking the question, "Who ordains the constitution?" With us it is unquestionably the voters. Ultimate authority rests with them, for they say, finally, what shall and what shall not be done. In the case of a statute, the legislators appear to ordain; but back of them are the voters, whose will is expressed in the law; otherwise, it fails. It is confusing to say that the voters can do nothing except as "authorized" by the constitution. The authority is in the other scale of the balance. The voters authorize, namely, give authority to, the constitution.

Constitutional lawyers sometimes show a tendency to treat a constitution as a separate entity, having vitality apart from the will of those who approve it and keep it in force. As well speak of a living branch when cut off from the vine. A constitution, in its scheme of government, is simply a plan of orderly action which the voters adopt until they think best to change it; in its bill of rights it is a self-denying ordinance in which the voters agree not to do certain things through their agent, the government, until they change their minds and choose to do them.

The discussion (pp. 14, 15) on our so-called "unwritten constitution" lacks clearness and is otherwise unsatisfactory, largely because a misleading comparison with the British constitution is made prominent. We may admit at once that our "unwritten constitution" is not legally binding like that of Great Britain, and still use the term correctly for some practices which are thoroughly imbedded in our political system without having found their way into the written constitution, mainly because of the great difficulty of amending it. Such is a method of nominating a candidate for the presidency—an indispensable step to an election, but one for which the written constitution makes no provision. Also the fixed practice of requiring a representative to reside in the district he represents, which adds a qualification to those prescribed in the written constitution.

In this connection an error may be noticed on page 15, where mention is made of "death before nomination," meaning before *election*.

A comparison of two statements made in different parts of the book shows lack of careful revision. On page 66 we read, "It cannot be properly said that the delegation of the veto power to the

executive renders the executive a component part of the legislative department in the matter of legislation." Then on page 207 we are told that "in the exercise of his function in this respect [approval or veto] the president or governor acts in reality as a branch of the legislative department."

The paragraph at the top of page 68 concerning "the present practice" in the states of choosing representatives to Congress by districts instead of by ticket at large gives no intimation that the practice is regulated by act of Congress *requiring* a state to be divided into districts, and each district to elect one and only one representative. Even the exceptional action noted as occurring after the number of representatives has been changed by a new apportionment, and before the legislature has re-districted the State, is provided for in the law. Can it then be said that "it would perhaps be competent for the legislature of any State to provide for the election of all the members at large instead of by districts if it should see fit"? Objections to this practice at an early date, particularly in New Jersey in 1838, led to the passage of the federal law intended to stop it. It is true that South Dakota has neglected to divide into districts for the election of its two representatives. But is not that an irregularity which Congress would not permit to become general?

On page 71 we are told, "It is not open for the courts in determining whether a statute has been lawfully enacted to go behind the signatures of the presiding officers and to investigate the question whether as a matter of fact it received in each house the necessary number of votes." Undoubtedly the usual practice is to accept the signatures as conclusive. But it can hardly be said that "it is not open for the courts" to do otherwise. In *Gardner* v. *The Collector* (6 Wall. 499) the observation is made "that whenever a question arises in a court of law of the existence of a statute, or of the time when the statute took effect, or of its precise terms, the judges who are called upon to decide it have a right to resort to any source of information which in its nature is capable of conveying to the judicial mind a clear and satisfactory answer to such question."

In "*The United States, Appellant,* v. *Ballin, Joseph & Co.*, otherwise known as "The Woolen Case," originally brought to test the validity of a law for which a majority of the House of Representatives had been obtained by "counting a quorum," the Supreme Court cited the above observation, then proceeded to act upon it. Although the law was duly attested, the Court went behind the signatures to the journal of the House, from which it appeared that the law had been passed under the new rule popularly known as "the Reed rule." This brought up the question "as to the validity of this rule," and the Court decided that the House was competent to pass such a rule, and that the figures given in the journal proved the vote to have been taken according to its provisions. On the basis of these facts, thus ascertained, the law was sustained.

On page 146, in discussing the constitutional power of Congress "to coin money, regulate the value thereof, and of foreign coin," the author says that "the federal government does not merely indicate the quantity of each particular metal which is included in the coin

piece, leaving the value to be determined by the current market value of such metal, but in the exercise of its sovereign power it determines arbitrarily the money value of the coins issued, and by the fact of their issuance makes them a legal tender for their coin value as may be provided by statute, with a limitation as to the aggregate amount for which the minor coins may be used as a legal tender." This is lacking in precision of thought and language. There is a failure to distinguish between the purchasing value of money in exchange for commodities, and the relative values of subsidiary coins in terms of the standard unit, which with us is the gold dollar. It is only the latter "value" which the government "determines arbitrarily," and it does that, not by "the exercise of sovereign power," but by its standing offer to exchange any coin in the system for the gold dollar at a specified ratio. As for the gold dollar, all that the government does is to name it, and "indicate the quantity" of gold which it contains. The government does exercise its sovereign power when it makes certain coins legal tender; but that is another matter, not involved in "the fact of their issuance," as erroneously stated.

On page 209. concerning the constitutional right of the President to call extra sessions of Congress, and to adjourn Congress in a certain contingency, we are told, "There has been little occasion to exercise the power to adjourn, but the power to call extra sessions when some emergency arises rendering legislative action important is frequently resorted to." This gives a wrong impression with regard to the facts, which are that the President has never adjourned Congress, and has summoned it in extra session only thirteen times in a hundred and sixteen years.

Other passages were marked by the reviewer for notice, but the limit of space allowed by the editors has been reached. A careful revision of the work before the publication of another edition is recommended.

REVIEWS TO FOLLOW:

FRENCH LAW OF EVIDENCE. By O. E. Bodington. London: Stevens & Sons. 1904. pp. viii, 199.

STREET RAILWAY REPORTS. Vol. II. Edited by Frank B. Gilbert. Albany: Matthew Bender & Co. 1904. pp. xix, 1051.

CURRENT LAW. George Foster Longsdorf, Editor in Chief. St. Paul: Keefe-Davidson Co. 1904. pp. Vol. I, x, 1208; Vol. II, xviii, 2195.

THE PRINCIPLES OF THE ADMINISTRATIVE LAW OF THE UNITED STATES. By Frank J. Goodnow. New York and London: G. P. Putnam's Sons. 1905. pp. xxvii, 480.

THE LAW OF INTERSTATE COMMERCE AND ITS FEDERAL REGULATION. By Frederick N. Judson. Chicago: T. H. Flood & Co. 1905. pp. xix, 509.

JESSUP'S SURROGATE PRACTICE. Second Edition. Two vols. New York: The Banks Law Pub. Co. 1903. pp. xv, 1824.

A TREATISE ON THE LAW OF REAL PROPERTY. By Frank Goodwin. Boston: Little, Brown & Co. 1905. pp. lii, 531.

CONSTITUTIONAL LAW IN ENGLAND. By E. W. Ridges. London: Stevens & Sons. 1905. pp. xxxii, 459.

THE LAW OF BAILMENTS. By James Schouler. Boston: Little, Brown & Co. 1905. pp. xxxii, 415.